

Republican  
National  
Committee

February 9, 2016

Federal Election Commission  
Office of Complaints Examination  
And Legal Administration  
Attn: Kim Collins, Paralegal  
999 E Street, NW  
Washington, DC 20436

Re: Matter Under Review 6911

Dear Ms. Collins:

We received notice on January 8, 2015 of the complaint (the "Complaint") in this matter filed by Mr. Raymond Schamis (the "Complainant"). Based on the allegations in the complaint, there is no reason to believe the Republican National Committee (the "RNC"), its treasurer Anthony Parker (in his official capacity), or, frankly, any other respondent, violated the law. The Complaint should be promptly dismissed and the file closed.

**I. The Complaint's Allegations**

The Complainant appears to allege two types of violations of the Commission's disclaimer requirements. First, he appears to allege that the RNC must place a disclaimer on Twitter's website where RNC Tweets appear because "Twitter accounts are public websites." Second, he appears to allege that "Tweets," "Retweets," and "Hashtags" constitute email communications and that the RNC has sent such communications via Twitter to more than 500 people, and thus these communications require disclaimers under the Commission's regulations. He points to specific Tweets posted by the RNC and contends that the lack of a disclaimer on the Tweets violated the law. The allegations are obviously legally erroneous.

**II. The Relevant Law**

The relevant law (or at least ostensibly relevant based on the Complaint) requires disclaimers on the following types of communications:

- (1) "all public communications, as defined in 11 CFR § 100.26, made by a political committee,"<sup>1</sup> which "shall not include communications over the Internet, except for communications placed for a fee on another person's Web site."<sup>2</sup>
- (2) "electronic mail of more than 500 substantially similar communications when sent by a political committee,"<sup>3</sup> and
- (3) "all Internet websites of political committees available to the general public."<sup>4</sup>

In short, the RNC is required to include disclaimers in electronic mail messages sent to more than 500 recipients, and on its own public website(s), as well as on other communications not relevant here. As detailed below, the RNC communications identified in the Complaint are Tweets and do not constitute either electronic mail or a website of a political committee.

### III. RNC Tweets Constitute Neither Electronic Mail Nor an Internet Website of a Political Committee.

Twitter (and its "Tweets," "Retweets," and "Hashtags") are not, as the Complainant argues, "electronic mails[sic]," but rather communications over the Internet facilitated by a social media platform, and are not included in the definition of general public political advertisement per 11 CFR § 100.26. Therefore, Tweets and Retweets posted via Twitter do not fall under the disclaimer requirements of 11 C.F.R. § 110.11, and no violation has occurred.

Twitter is a form of social media, which Merriam-Webster defines as "forms of electronic communication (as Web sites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content."<sup>5</sup> It is a free information network made up of 140-character messages called Tweets.<sup>6</sup> Tweets may contain photos, videos, links, and up to 140 characters of text.<sup>7</sup> Twitter limits Tweets to 140 characters and reserves 20 characters for user names.<sup>8</sup> This way, Tweets can be read easily on a small screen, such as a cell phone. Put simply, Twitter is a free-to-use web site and corresponding mobile device application where one can post messages limited to 140 characters which can be read by other users who subscribe (or "follow") to that user.<sup>9</sup> Registered users of

<sup>1</sup> 11 C.F.R. § 110.11(a)(1).

<sup>2</sup> 11 C.F.R. § 100.26.

<sup>3</sup> 11 C.F.R. § 110.11(a)(1).

<sup>4</sup> *Id.*

<sup>5</sup> Merriam-Webster Online Dictionary, *social media*, (2015), <http://www.merriam-webster.com/dictionary/social%20media>.

<sup>6</sup> Twitter Help Center: Getting Started with Twitter, <https://support.twitter.com/articles/215585-getting-started-with-twitter> (last visited Feb. 9, 2015).

<sup>7</sup> Twitter Help Center: New User FAQs, <https://support.twitter.com/groups/50-welcome-to-twitter/topics/203-faqs/articles/13920-new-user-faqs> (last visited Feb. 9, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Twitter can read and post Tweets, but unregistered users can only read Tweets.<sup>10</sup> Posted Tweets are available to be read anytime through either the Twitter website or Twitter app.<sup>11</sup>

Email, on the other hand, is defined as messages sent and received electronically through an email system.<sup>12</sup> Specifically, email requires a user to register for an account with an email client in order to access, manage, send, or receive messages. Microsoft Outlook and Gmail are examples of email clients. Email clients are only active when a user accesses them, although they can be set to check for incoming messages at set intervals. Emails consist of specific sender(s) and recipient(s), and cannot simply be posted on a website unless first retrieved by a user from their own account. Since Twitter and Tweets are so fundamentally different than email, the Complaint is simply incorrect in asserting that Tweets are "electronic mails[sic]."

Twitter and Tweets are social media "communications made over the Internet," and since Twitter is a free service (to all users in the normal course) there are no fees involved. Therefore, the requirements of 11 C.F.R. § 110.11 do not apply to Twitter, Tweets, or Retweets, and no violation has occurred.

The Complainant further misunderstands the function of Twitter as a third-party website and social media platform when he states that since "Twitter accounts are public websites... as such, a disclaimer must be placed on the website."<sup>13</sup> Indeed, Twitter is available to the general public by its website. However, irrespective of the fact that political committees such as the RNC have Twitter accounts, the Twitter website is not a political committee website. It is a third-party social media platform. The Commission recognized the difference between a political committee's website and its social media site in Advisory Opinion 2011-02 (Brown).

Underscoring the fact that neither Twitter itself nor any Twitter account constitutes the website of a political committee (or of any other user) is the fact that in order to access and use the services provided by Twitter, one must agree to be bound by Twitter's Terms of Service.<sup>14</sup> The Terms of Service govern user access to and use of Twitter services, as well as any information, graphics, texts, or photos uploaded to, downloaded from, or appearing on Twitter.<sup>15</sup> A user may have their access revoked or account suspended "at any time for any reason."<sup>16</sup>

The RNC's use of Twitter and its website is the same as any other user. The RNC's websites, such as [www.gop.com](http://www.gop.com), do fall under the disclaimer requirements of 11 C.F.R. § 110.11, and accordingly include the appropriate disclaimers. However, the Complainant is incorrect in his implicit assertion that because the RNC has a Twitter account, that page is the Committee's website.

<sup>10</sup> Twitter Help Center: FAQs About Following, <https://support.twitter.com/groups/50-welcome-to-twitter/topics/203-faqs/articles/14019-faqs-about-following> (last visited Feb. 9, 2015).

<sup>11</sup> Twitter Help Center: New User FAQs, <https://support.twitter.com/groups/50-welcome-to-twitter/topics/203-faqs/articles/13920-new-user-faqs> (last visited Feb. 9, 2015).

<sup>12</sup> Merriam-Webster Online Dictionary, *e-mail*, (2015), <http://www.merriam-webster.com/dictionary/e-mail>.

<sup>13</sup> Complaint at 2.

<sup>14</sup> Terms of Service, <https://twitter.com/tos> (last visited Feb. 9, 2015).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

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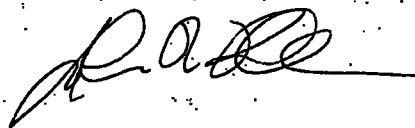
Ultimately, even if Tweets did constitute public communications or email communications, the "small items" and "impracticability" exemptions would apply. In Advisory Opinion 2002-09 (Target Wireless), the Commission concluded that the disclaimer exception for small items now at 11 C.F.R. § 110.11(f)(1)(i) applied to SMS messages limited to 160 characters (and did not need to consider whether the "impracticability" exception now at § 110.11(f)(1)(ii) applied). The Commission concluded that messages of such limited length were similar to bumper stickers and other small items for which a disclaimer was specifically not required. Given that Tweets are limited to even fewer characters (140 characters) than the text messages the Commission considered (160 characters), the exception applies with even greater force here.

#### IV. Conclusion

For all the foregoing reasons, the Commission should find no reason to believe a violation occurred. Twitter is a social media platform used for internet communications, and is not email or "electronic mails[sic]." The Twitter website is not a website of the RNC. Twitter and its use falls under the Internet communications exclusion of 11 C.F.R. § 100.26, and is therefore not subject to the disclaimer requirements of § 110.11. Moreover, the character limit of Tweets renders the inclusion of disclaimers impracticable.

In short, disclaimers clearly are not required in Tweets, and the Complaint should be promptly dismissed and the file closed.

Sincerely,



John R. Phillippe Jr.  
Chief Counsel